IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

ROSE MARY FARENDEN

Group Art Unit: 3623

Examiner: Johnna Ronee Loftis

Serial No.: 09/800,069

Filed: March 6, 2001

For: WEB SITE FOR RECRUITING CANDIDATES FOR EMPLOYMENT

Attorney Docket No.: 81067015 / FMC 1335 PUSP

REPLY BRIEF

Mail Stop Amendment
Commissioner for Patents
U.S. Patent & Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In response to the Examiner's Answer mailed June 1, 2006, Applicant hereby submits the following reply.

CERTIFICATE OF ELECTRONIC FILING

This paper, including all enclosures referred to herein, is being electronically filed with the U.S. Patent and Trademark Office EFS-Web System on: July 27, 2006

Remarks

Claim 6 includes the limitation wherein the icon is configured to receive input for selecting and deleting a retained employment opportunity. The Examiner's new ground of rejection for claim 6 fails to establish a *prima facie* case of obviousness.

A. The Examiner Has Improperly Taken Official Notice Of Facts

The Examiner has improperly taken Official Notice of "select[ing] and deselect[ing] results of a query." (Examiner's Answer, June 1, 2006, pg. 6). *See* MPEP 2144.03:

> It would not be appropriate for the examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known. For example, assertions of technical facts in the areas of esoteric technology or specific knowledge of the prior art must always be supported by citation to some reference work recognized as standard in the pertinent art . . . . *In re Eynde*, 480 F.2d 1364, 1370, 178 USPQ 470, 474 (CCPA 1973) ("[W]e reject the notion that judicial or administrative notice may be taken of the state of the art. The facts constituting the state of the art are normally subject to the possibility of rational disagreement among reasonable men and are not amenable to the taking of such notice.").

B. "Shopping" Is Not An Analogous Art

The Examiner asserts that "in analogous art such as shopping, a user can search for an item based on criteria wherein the user can select and deselect items from a shopping cart." (Examiner's Answer, June 1, 2006, pg. 6). Applicant's Attorney contends that "shopping" is not analogous art. *See In re Clay*, 966 F.2d 656, 659 (Fed. Cir. 1992) ("A reference is reasonably pertinent if, even though it may be in a different field from that of the inventor's endeavor, it is one which, because of the matter with which it deals, logically would have commended itself to an inventor's attention in considering his problem.")

C. An Assertion That Art Is Analogous Does Not Provide The Necessary Motivation To Combine

The Examiner's mere assertion that "shopping" is analogous prior art does not provide the necessary motivation to combine the references with the substance of the Examiner's improper Official Notice. The prior art must suggest the desirability of the claimed invention. MPEP 2143.01. The Examiner fails to cite any suggestion from the references of the desirability of Applicant's claimed invention. The fact that Joao teaches away from the proposed combination, as explained in Applicant's Appeal Brief, undermines the Examiner's obviousness argument.

Respectfully submitted,

ROSE MARY FARENDEN

By_____

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Date: July 27, 2006

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